COLLECTOR OF LAND REVENUE, KUANTAN v. NOOR CHAHAYA BINTE ABDUL MAJID

[F.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman and Chang Min Tat F.JJ.) September 27 and October 23, 1978]

[Kuala Lumpur — Federal Court Civil Appeal No. 210 of 1977]

Land Acquisition — Market value — Principles to be applied — Land Acquisition Act, 1960, First Schedule.

This was an appeal by the Collector of Land Revenue Kuantan from the award made by the High Court pursuant to a reference under the Land Acquisition Act. The learned judge had increased the Collector's award of $9,000 per acre to $20,000 per acre.

Held: (1) while the learned judge rightly directed himself that potentiality was a factor to be taken into account in assessing compensation he had formed the erroneous opinion that market value and potential value were two separate items to be determined separately and then to be added to one another. Market value should include potential value;

(2) the learned judge had not taken into account the express condition limiting the use of the land because of its Malay Reservation status, as he should have done under paragraph 1(2) of the First Schedule to the Land Acquisition Act;

(3) the learned judge again acted in contravention of paragraph 3(e) of the First Schedule in adding $5,000 to $6,000 per acre as "the building potential to its estimated value because it had become a housing estate";

(4) the amount awarded should be reduced to $13,000 per acre.

Case referred to:-

(1) *South Eastern Railway Co.* v. *L.C.C.* [1915] 2 Ch. 252, 258.

FEDERAL COURT.

Lamin bin Haji Mohamed Yunus, Legal Adviser, Pahang, for the appellant.

Sulaiman Alias for the respondent.

Cur. Adv. Vult.

Wan Suleiman F.J. (delivering the judgment of the Court): This is an appeal by the Collector of Land Revenue, Kuantan from the award made by the High Court pursuant to a reference thereto under the Land Acquisition Act. The learned judge had increased the Collector's award of $9,000 per acre to $20,000 per acre.

Lot No. 799 together with 3 adjoining lots of which Lot 1422 is outside Malay Reservation, were acquired for the purpose of building low-cost houses. The material date of valuation is March 27, 1975, the day of the notice under section 8 of the Act. These lots lie (we are quoting from the Government Valuer's report) on the west side of the Kuantan-Kemaman Road at approximately 6¼ m.s. Beserah Village itself is about 1 mile to the south of the site while Sungai Karang Village is about 1 mile to the north. The site, which is outside the Local Council Area Boundary adjoins the Sekolah Menengah Kebangsaan. The Government Valuer has helpfully provided us with a plan referred to as Appendix B in her report which shows various pieces of land both inside and outside the Malay Reservation regarding which there have been transactions just before and just after the material date.

Continuing with her report the Valuer said that the major development in this area, outside Beserah Village itself is the Satellite Station shown on the plan. The Golden Beach Hotel on Lot 1387 closed down in 1975. Apart from these, and the school on Lot 1575, development is in the form of temporary kampong type dwelling houses. There is a network of earth roads, some motorable, while others are usable only by two wheeled vehicles, leading off from the main Kuantan-Kemaman Road. The lots to the interior are also under kampong type development interspersed with small holdings of rubber and fruit trees.

Both electricity and water services are available although a large number of houses in this area continue to use well water. Bus service is available along the main road.

The Collector called as a witness the State Valuer, who mindful of the principle that one of the best ways of determining market value is "the price paid within a reasonable time, in *bona fide* transactions of purchase of the lands acquired, or of the lands adjacent to the lands acquired and possessing similar advantages" (see *Aggarawala* — Compulsory Acquisition of Land, 4th Edition Vol. 1, page 336), proceeded to examine transactions at about the material date i.e. March 27, 1975, the date of the notice under section 8 of the Act.

The Valuer took into special consideration the sales of Lot 794, at $5,744 per acre on March 13, 1975, Lot 922, which adjoins the acquired lot at $11,022 on September 14, 1974, and Lot 1451 at $6,195 on March 12, 1974. These three lots were inside the Malay Reservation. She also took into account the sale of 2 lots *outside* the Malay Reservation. Lot 400 at $7,430 on May 10, 1973 and Lot 1389, for which no consideration is on record but which the Collector of Land Revenue valued at $15,000 per acre for stamp duty purposes. Having done so, she arrived at a figure of $7,000 per acre for the lot acquired, Lot 799. A footnote to her report added that after subsequent discussions with the Collector, the valuation of Lot 799, (as well as the two other adjoining Malay Reservation lots acquired. Lots 946 and 962) were revised upwards to $9,000 per acre, though the award for adjoining seaward Lot 1422 which is outside the Malay Reservation remained at the original $16,000. No reason was given by the Valuer for this change of mind.

However her testimony showed why Lot 922 fetched a better price in 1974 than the nearby Lot 794. The former lot had better access, and had only one lot between it and the sea, whereas Lot 794 had two.

In increasing the award from $7,000 to $9,000 per acre the Collector said that he had taken into consideration the higher priced Lot 922, Lot 794 sale price of which we have already mentioned, and Lot 800, sold at $2,963 on June 26, 1973. He had also taken into account the development taking place, and the report of the Settlement officer, which as the learned judge correctly remarked, was not in evidence. The only relevance of the price paid for Lot 800 about two years earlier would be to show the rapid upward trend of land values in that vicinity.

In the process of valuing the land, the learned judge seems to have been influenced by two out of

six propositions enunciated by Eve J. in *South Eastern Railway Co.* v. *L.C.C.*[1] at page 258.

In his judgment, these two propositions were reproduced thus "Market price is not always the conclusive test of real value. The value to be ascertained is the price to be paid for the land with all its potentialities and with all the use made of it by the vendor". The facts of that case as set out in the headnote read as follows:—

"A railway company which was seised in fee of property in London bounded on the north by the Strand and on the east by Craven Street received notice to treat for a portion of this property from the London County Council for the purpose of widening the street. By a contract made in 1912, which superseded this notice, the company agreed to sell to the Council a piece of land forming part of Nos. 9 and 10, West Strand, at the back of which were Nos. 1 to 7, Craven Street. The Council covenanted to execute all necessary road making so as to give the remainder of Nos. 9 and 10, Strand a frontage to the Strand as widened. The purchase-money, and compensation were to be determined by an arbitrator, and by his award he awarded the sum of 18,330*l* by way of purchase-money, and nothing beyond for compensation. By way of addenda he declared that in arriving at this sum he had had regard solely to the value of the estate and interest in the said land contracted to be sold, but that if the true measure of the purchase-money and compensation were the difference between the value of the Strand and Craven Street land before giving of the notice and the aggregate value of the said lands after the taking of the frontage strip, he found that the amount of purchase-money and compensation would be 3,465*l*."

The action, it should be observed was for specific performance of the contract and the question which the court had to answer was posed by Eve J. at page 258 in these words: "In ascertaining the purchase price to be paid for the land contracted to be sold, was the arbitrator justified in treating the vendors as though they were the owners of Nos. 9 and 10 only, or ought he to have had regard to the fact that they were owners also of the land in the rear of these premises?"

It is in the context of such inquiry that the six propositions we have alluded to were enunciated. The passage cited by the learned judge cannot, with respect be adopted as a general statement of the principles governing land valuation.

While the learned judge rightly directed himself that potentiality is a factor to be taken into account in assessing compensation he had formed the erroneous view that market value and potential value are two separate items to be determined separately and then to be added to one another.

"Market value" must indeed include potential value. Citing again from the same volume of *Aggarawala* at page 392 under the heading "Potential Value":

"'Market-value' as already noted, has been stated to be the price that an owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale and purchase of the land, that is, the price that would be paid by a willing purchaser to a willing seller, where both are actuated by the business principles prevalent at the time in the locality. It would be evident from this that the market-value does not mean simply the value of the land from the manner in which it is being actually used for the time being, but it includes all future possibilities on which a prudent purchaser would calculate and a vendor would base his expectations, both parties actuated by business principles or in other words, the owner is entitled not merely to the value of the realised possibilities of the property but also to the value as yet unrealised possibilities or potentialities. For instance, a person may purchase a garden near a town which may not be yielding a very good return but which if cut down and laid out into plots for residential purposes may be expected to fetch a very high price. Consequently, the price which the purchaser would be prepared to pay for this garden will be more than its value merely as a garden, and the seller also will not be satisfied and will not be willing to sell if he is offered its price merely as a garden with no possibility of its more profitable use in future. The garden is said to have 'potential value' and this term includes what have been variously called 'future utility' 'probable use of the land in a more lucrative manner,' 'special adaptability,' 'better lay-out,' and so forth."

It is also plain from the judgment that the learned judge would acknowledge no difference between value of land outside Malay Reservation from land within it.

It is for this reason that the learned Legal Adviser, Pahang contended that Lot 1346 ought not to be relied upon as a basis of comparison at all and that if that lot and Lot 1422 were to be used at all for such purpose, it should not have been treated in the manner in which it was treated by the learned judge.

It may well be, as Encik Sulaiman for respondent maintained that on account of the greater prosperity now prevailing among Malays and since certain banks are now designated as "bumiputra" and can engage in transactions with Malay Reservation land, making development loans more readily available, Malay Reservation lands have overcome their Cinderella status. Nevertheless the fact remains that at law no non-Malay can own reservation land, and this restriction must remain a disadvantage, which must necessarily be reflected in a lower market value.

Taking Lot 922 (reservation land) as a starting point, the judge had then chosen for comparison the two non-reservation lots 1422 and 1436, which he correctly regarded as being two pieces of land with similar advantages with one another, but he seems to have overlooked the fact that they were doubtlessly superior to Lot 922 not only because these are non-reservation land, but also by reason of their being on the sea shore. From the difference between the sale price of Lot 1436 at $20,000 and the valuation of Lot 1422 at $16,000 by the Government Valuer nine months earlier he then arrived at a rate of monthly appreciation of value of $333 per acre. Since Lot 799 should in his view be given a higher value than the adjoining Lot 922 which being somewhat further from the sea he regarded as being inferior and which was sold in September 1974, he thus arrived by simple arithmetic, at a figure of $14,000 or $15,000 per acre for Lot 799 in March 1975.

To this figure he then tagged on an additional $5,000 or $6,000 per acre being the sum he calculated was its building potential "bearing in mind that the acquiring authority had at $500,000 benefitted from the land by about more than 10 times . . .".

It has been said that valuation of immoveable property is not an exact science. However there are recognised methods of determining market value, and it will be well for courts to bear that in mind.

The learned trial judge had ignored two statutory principles laid down in the First Schedule of the Act for determination of compensation. An express condition limiting the use of the land (its Malay Reserva-

tion status) had not been taken into account as he should have done under paragraph 1(2) thereof. The addition of $5,000 to $6,000 per acre which the judge chose to value as its "building potential to its estimated value because it had become a housing estate as a direct consequence of the acquisition is again in contravention of paragraph 3(e) of the same Schedule.

The many transactions shown in the plan referred to as Appendix B in the Valuation Officer's Report can but serve as a general guide to land values in that area. The range of prices is however wide. Having warned ourselves to bear in mind those statutory principles previously mentioned we do agree with the learned judge that the adjoining Lot 922 sold on August 14, 1974 for $11,022 per acre would in the circumstances be the best price on which to base our valuation. We also agree that the evidence point to a steady rise in land values in the vicinity, though not perhaps as much as in the case of the two non-reservation lots considered by him. In addition, there is the added advantages of Lot 799 having two road frontages (Lot 922 has only one), of being adjacent to a school as well as being noticeably closer to the sea. Taking all these factors into account we are of the view that the sum of $13,000 per acre would be reasonable compensation.

We would allow this appeal with costs and order that the amount awarded by the court below be reduced to $13,000 per acre.

Appeal allowed.

Solicitors: *Suleiman, Nava & Raj.*

YONG NYEE FAN & SONS SDN. BHD. v. KIM GUAN & CO. SDN. BHD.

[F.C. (Chang Min Tat F.J., Syed Othman F.J. and Abdoolcader J.) October 23, 24 & November 15, 1978]

[Ipoh — Federal Court Civil Appeal No. 15 of 1977]

Trust — Property bought and registered in name of appellant company — Respondent company alleging that property held in trust for them — Person who bought property since died — Case for claimants of trust to be approached with suspicion — No evidence that purchaser constituted himself a trustee — Laches — Constructive trust not proved.

Practice and Procedure — Whether appeal court can differ from trial court — Inferences to be drawn from evidence.

In this case a house was bought by one Yong Nyee Fan (since deceased) and registered in the name of the appellant company. The respondents paid compensation to the tenants of the premises and thereafter occupied the premises. The deceased had demanded rent from the respondents for their occupation but they claimed that the payments made by them were for interest. There was no evidence that the deceased had constituted himself the trustee of the property for the respondents. The learned trial judge however held on the evidence that there was a constructive trust and he declared that the property was held by the appellants in trust for the respondents. The appellants appealed.

Held, allowing the appeal: (1) the authorities establish that though the case for the claimants of a trust against a dead man needs no corroboration, it must be approached with suspicion;

(2) in the absence of evidence in this case, the alleged trust could not be said to have been proved, even on a balance of probabilities.

Cases referred to:-

(1) *Weld-Blundell* v. *Petra* [1928] All E.R. Rep. 564.
(2) *Archbold* v. *Scully* 9 H.L. Cases 371.
(3) *Lindsay Petroleum Co.* v. *Hurd* L.R. 5 P.C. 239.
(4) *Erlanger* v. *New Sombrero Phosphate Co.* (1878) 3 App. Cas. 1218.
(5) *Parkin* v. *Thorold* (1862) 16 Beav. 59, 66-67; 51 E.R. 698.
(6) *In re Hodgson* (1886) 31 Ch. D. 177, C.A.
(7) *In re Cummings decd.* [1972] 1 Ch. 62, C.A.
(8) *In re Garnett* (1886) 31 Ch. D. 1, C.A.
(9) *Thomas* v. *Times Book Co.* [1966] 1 W.L.R. 911.
(10) *Re Postlethwaite* (1888) 60 L.T. 514 C.A.

HIGH COURT.

Chinn Swee Onn (*Soo Wai San* with him) for the plaintiff company.

Chin Fook Yen for the defendant company.

Cur. Adv. Vult.

Hashim Yeop A. Sani J.: The plaintiff company began as a partnership business dealing in textiles under the name and style of Kim Guan & Company with its registered office at No. 65, Hugh Low Street, Ipoh, the partners being Yap Fook Sen and Tan Phang Nam, i.e. PW1 and PW2 respectively. In early 1955, the company was converted into a limited company on incorporation under the name and style of Kim Guan & Company Sendirian Berhad and has since then been having its registered office at No. 26, Hugh Low Street, Ipoh. The first directors of the new company were PW1, PW2 and one Yong Nyee Fan (since deceased). What will shortly be unfolding is the story of these three business associates.

In 1949 a social club for Chinese businessmen of the town of Ipoh was formed for social as well as for business purposes. There is evidence from PW1 and PW2 that they frequently met at the club during the early part of 1950s. PW1, PW2 and the said Yong Nyee Fan were obviously close business associates throughout the period of the 1950s. This must be so for it is in their evidence that both PW1, Yap Fook Sen and PW2, Tan Phang Nam had been associated with the said Yong Nyee Fan in another mining company called Yong Nyee Fan Mining Company which they formed in 1950.

It would appear from the evidence of PW1 and PW2 that the incorporation of the plaintiff company was preceded by several informal meetings between these three persons. According to their version the said Yong Nyee Fan became interested in the textile business because he himself said that there was good prospect in that business due to the Korean war. This was said to be sometime in 1954. Although Yong Nyee Fan first showed interest around 1950 it was only in 1954 that something materialised from their meetings at the social club. It would also appear that another company of the said Yong Nyee Fan had also been formed by then and this was Yong Nyee Fan & Sons Company Limited, the defendant company, which is an investment company. PW1 said he discussed with PW2 who at first did not seem to be interested to have another partner in their textile busi-